

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GREAT MIDWEST INSURANCE  
COMPANY,

Plaintiff,

v.

BUTCH THOMPSON  
ENTERPRISES, INC, CONRAD  
CORPORATION, INC., JUDSON C.  
THOMPSON, and CAROLYN S.  
THOMPSON,

Defendants.

Case No. 1:23-cv-03440-SEG

**STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS**

Comes now Defendants Conrad Corporation, Inc., Judson C. Thompson, and Carolyn S. Thompson and files this Statement of Additional Undisputed Material Facts:

1. Butch Thompson Enterprises, Inc. (“BTE”) entered into a Contract with Cobb County for the construction of a sidewalk project known as the Hillcrest Drive Sidewalk (the “Project”). Dkt. 30-1, Dkt. 30-2, Dkt. 30-3.
2. The Contract had various requirements for payments and required payment within a reasonable period after receipt of a payment application. *Id.*

3. In the event that the County believed there was a breach or other justification for withholding for payment, it had to provide notice of such and provide BTE with 10 days to cure. *Id.*

4. Letters involving notices of potential default and default must be sent by the “Engineer” which is defined as The Cobb County Director of Transportation, acting directly or through their duly authorized representatives.” *Id.*

5. Pursuant to the terms of the Contract, Cobb County was expected to provide progress payments during the Project. These payments were intended to pay for materials purchased by BTE and subcontractors providing work for the Project. *Id.*; Judson Dec. ¶25.

6. BTE submitted Pay Application No. 1 to Cobb County requesting payment. Cobb County did not fulfill this Pay Application in full. This is reflected in Pay Application No. 2. Judson Dec. ¶26.

7. On February 8, 2023, BTE submitted Pay Application No. 2 to Cobb County, requesting payment showing \$80,801.91 that had been outstanding for 90 days. Cobb County did not fulfill this Pay Application in full. Judson Dec. ¶27.

8. On August 11, 2022, BTE submitted Pay Application No. 3 to Cobb County, requesting payment of \$33,292.04 on or before August 11, 2022. Cobb County did not fulfill this Pay Application in full. Judson Dec. ¶28.

9. When BTE submitted Pay Application No. 10, it requested \$176,904.30, less \$8845.22 retainage, for a net payable amount of \$168,059.08. Cobb County inexplicably and unilaterally slashed the bill to a net pay of \$21,963.76. Judson Dec. ¶29.

10. These payment shortages impacted BTE's ability to pay its subcontractors and suppliers, resulting in impacts to job progress. Judson Dec. ¶8-10, 30.

11. To offset these reduced payments, BTE and Thompson were forced to execute financing agreements with high interest and penalty rates in order to keep the job progressing and to finance BTE. Judson Dec. ¶31.

12. BTE did not receive a single payment from Cobb County after January 26, 2023. Judson Dec. ¶19.

13. Due to the continued nonpayments, BTE was unable to repay the financing agreements, which all had personal guarantees of Conrad and Thompson. This resulted in the following joint creditors: (1) Greenwich Capital Management;

(2) Clearfund Solutions LLC; (3) White Road Capital LLC; (4) Advance Service, Inc.; and (5) Prosperum Capital Partners LLC. Judson Dec. ¶5.

14. Cobb County breached its Contract with BTE for the Hillcrest Project in numerous ways. These include wrongfully withholding payments owed to BTE failing to timely issue change orders for different scopes that increased the cost and time necessary to perform the work and utilizing overly stringent standards for inspection. Dkt. 55 – Injunction Hearing 45:16-47:19; Judson Declaration ¶18.

15. These breaches occurred prior to the default termination. Judson Dec. ¶18.

16. The default termination was also improper because it failed to follow the contractual process. Specifically, the initial notice provided by the County that must precede any default was not sent by the Engineer, as required by the Contract. Dkt. 56-3 Kahn Dec. p. 107-108.

17. BTE did not receive a single payment from Cobb County between January 26, 2023 and May 8, 2023. Judson Dec. ¶19.

18. BTE provided the detailed reasons for why the default was improper to Great Midwest on numerous occasions. Judson Dec. ¶18.

Dated this 28<sup>th</sup> day of October 2024.

**SMITH, CURRIE OLES LLP**

*/s/ Lochlin B. Samples* \_\_\_\_\_

Lochlin B. Samples

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*Attorneys for Defendants*

**CERTIFICATE OF COMPLIANCE**

I certify that the brief has been prepared with one of the fonts (Times New Roman) and point selections (14 pt.) approved by the Court in LR 5.1.

*/s/ Lochlin B. Samples* \_\_\_\_\_

Lochlin Samples

Georgia Bar No. 303893

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28<sup>th</sup> day of October 2024, I electronically filed a copy of the foregoing Defendants Statement of Additional Undisputed Material Facts with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Lochlin B. Samples  
Georgia Bar No. 303893